

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 )  
4 UNITED STATES OF AMERICA, )  
5 )  
6 Plaintiff, ) Criminal Action  
7 v. ) No. 13-10200-GAO  
8 )  
9 DZHOKHAR A. TSARNAEV, also )  
known as Jahar Tsarni, )  
10 Defendant. )  
11 )

12 BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
13 UNITED STATES DISTRICT JUDGE

14 **LOBBY CONFERENCE**

15 **SEALED TRANSCRIPT**

16 John J. Moakley United States Courthouse  
17 Courtroom No. 9  
18 One Courthouse Way  
19 Boston, Massachusetts 02210  
Monday, March 30, 2015  
3:43 p.m.

20  
21 Cheryl Dahlstrom, RMR, CRR  
22 Official Court Reporter  
23 John J. Moakley U.S. Courthouse  
24 One Courthouse Way, Room 3510  
25 Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

## 2 OFFICE OF THE UNITED STATES ATTORNEY

3 By: William D. Weinreb, Aloke Chakravarty and  
4 Nadine Pellegrini, Assistant U.S. Attorneys  
5 John Joseph Moakley Federal Courthouse

6 Suite 9200

7 Boston, Massachusetts 02210

8 - and -

9 UNITED STATES DEPARTMENT OF JUSTICE

10 By: Steven D. Mellin, Assistant U.S. Attorney  
11 Capital Case Section

12 1331 F Street, N.W.

13 Washington, D.C. 20530

14 On Behalf of the Government

15 FEDERAL PUBLIC DEFENDER OFFICE

16 By: Miriam Conrad, William W. Fick and Timothy G.  
17 Watkins, Federal Public Defenders

18 51 Sleeper Street

19 Fifth Floor

20 Boston, Massachusetts 02210

21 - and -

22 CLARKE & RICE, APC

23 By: Judy Clarke, Esq.

24 1010 Second Avenue

25 Suite 1800

San Diego, California 92101

- and -

LAW OFFICE OF DAVID I. BRUCK

By: David I. Bruck, Esq.

220 Sydney Lewis Hall

Lexington, Virginia 24450

On Behalf of the Defendant

1 (LOBBY CONFERENCE AS FOLLOWS:

2 THE COURT: I'm principally interested in scheduling,  
3 where we are. I just want to know whether the -- there's more  
4 defense evidence coming or there's a -- we had a list and the  
5 government's motion with respect to it. I don't know where  
6 people are on that issue or those issues.

7 MS. CLARKE: Well, I don't know how the Court is going  
8 to rule on various witnesses, but --

9 THE COURT: Let me just say, as a general matter, most  
02:44 10 of these people on the list that you gave me seem to be  
11 second-phase witnesses, not first-phase witnesses.

12 MS. CLARKE: Our current intention, your Honor, is to  
13 call Mark Spencer on computer evidence, and Mr. Fick can  
14 address the narrowed focus of Mr. Spencer.

15 THE COURT: Okay.

16 MS. CLARKE: We were unable to reach the stipulation  
17 regarding fingerprints for some reason, so the government is  
18 bringing Miss Graff from Washington, D.C., for us to put on.  
19 She will identify fingerprints on the items of evidence that  
02:45 20 the government introduced during their case, sort of an  
21 uncontroversial, I think, issue.

22 THE COURT: Whose witness is she?

23 MR. WEINRAB: She's --

24 MS. CLARKE: She's now our witness. We had proposed a  
25 stipulation, and the government rejected it. So she's

1 currently our witness. And then --

2 THE COURT: What's her name?

3 MR. WEINRAB: Elena Graff, G-r-a-f-f.

4 MS. CLARKE: There were some items of -- some  
5 photographs we will seek to admit: the boat, the remainder of  
6 the photographs of Mr. Tsarnaev coming out of the boat. You  
7 may recall one got in. The government objected to one. One of  
8 him stepping out of the boat got in. One of him laying on the  
9 ground at the end did not get in. We intend to offer the  
02:46 10 remainder of the ones getting out of the boat.

11 THE COURT: How many are they?

12 MR. WATKINS: I think about five total.

13 MR. WEINRAB: We object to those as being --

14 THE COURT: What's the probative value?

15 MR. WATKINS: The probative value is a state of mind.  
16 The government has the writings inside of the boat that are a  
17 centerpiece of the case -- much of the case against him for  
18 motive. And I think the defense should be allowed to explain  
19 his state of mind at that time.

02:46 20 THE COURT: Can you send us the photos you intend to  
21 use, email them to Jane?

22 MS. CLARKE: Sure.

23 MR. WEINRAB: We argue it's more prejudicial than  
24 probative on the grounds that the uncontested testimony is that  
25 the -- the bullets had been fired into the boat at least two

1 hours before he was pulled out of there. So that it calls for  
2 speculation for the jury to be drawing any connection between  
3 when the note was written, which could have been eight, ten  
4 hours earlier, and when he comes out of the boat. Without them  
5 laying -- the defense laying some foundation that the two  
6 events were close in time, it has too great a risk of  
7 misleading or confusing the jury.

8 THE COURT: I'll look at them.

9 MR. WATKINS: Sounds like --

02:47 10 THE COURT: It might -- well, anyway, I'll look at  
11 them.

12 MS. CLARKE: There's a travel document for Tamerlan  
13 Tsarnaev that I believe was a government exhibit that we intend  
14 to move in in connection with Mr. Spencer's --

15 MR. FICK: It's a certification of a public record  
16 from Immigration and Customs just indicating Tamerlan  
17 Tsarnaev's departure date from the U.S. and return date to the  
18 U.S. to orient the jury to some of the events and things that  
19 are happening on the digital devices.

02:47 20 MR. WEINRAB: We'd object to that. Basically, it just  
21 simply shows that in the summer of 2012 Tamerlan Tsarnaev took  
22 a trip to Russia. That has nothing to do with this phase of  
23 the trial and can only confuse and mislead the jury into  
24 believing it does have something to do with this phase of the  
25 trial.

1 MR. FICK: Your Honor, there already was testimony  
2 about the dates in general. The specific date particularly of  
3 his departure is important because certain things happened on  
4 the Sony computer associated with Mr. Tsarnaev and other  
5 digital devices on that day, literally on the eve of the day of  
6 Tamerlan's departure that go to the travel of documents between  
7 the devices, the origin of documents on the devices, which is  
8 all of a piece with helping the jury understand and evaluate  
9 whether he self-radicalized or whether there was a flow of  
02:48 10 material and what that flow was. All we want is the dates, and  
11 it's a public document that has the date.

12 MR. WEINRAB: Yet none of that has anything to do with  
13 guilt or innocence, just with penalty.

14 MR. FICK: Well, the government has put in though  
15 extensive information about what happened and what is on  
16 various digital devices, tried to tie that to the defendant.  
17 And so I would suggest we're entitled to rebut misleading  
18 inferences that may be left from that information about did he  
19 self-radicalize; where did the documents come from; when did  
02:49 20 they arrive on the various devices and how that fits into the  
21 rest of the case. Again, it's a very discrete point. We don't  
22 intend to belabor it. But it is of a piece with rebutting the  
23 presentation the government has made.

24 MR. BRUCK: I should say that right before Dr. Levitt  
25 testified we were advised by the government that he was not

1 going to go into the subject of radicalization, and then he  
2 went straight into it. And so the door has been opened at this  
3 phase of the trial, and I think it's a little late for the  
4 government to say, No, no, that's a subject for the penalty  
5 phase. We're here.

6 THE COURT: I'm not sure I understand exactly what  
7 you're talking about because you're being general about it.

8 MR. FICK: So let me be a little more specific. I  
9 think this is a gateway into talking about the narrow scope of  
02:49 10 our intended use of Mr. Spencer in the guilt phase of the  
11 trial. We want to rebut some specific inferences the  
12 government has suggested in the case about who did what and  
13 about how certain materials appeared and when they appeared.  
14 To be specific, we would like to put in Tamerlan Tsarnaev's  
15 computer's search history to really establish three facts at  
16 this point in the trial: the fact that shortly before the  
17 events of the case, Tamerlan's computer searched for "Ruger  
18 P95." There's no search on the Sony. Tamerlan's computer  
19 searched for a gun store in New Hampshire. No such search on  
02:50 20 the Sony. And Tamerlan's computer searched for "Boston  
21 Marathon" before the events. No such search on the Sony.  
22 Again, simply to rebut the inference that the government has  
23 been trying to encourage the jury to make about who had the  
24 gun, who was most interested in the gun, who the gun was for,  
25 et cetera. Those three discrete pieces of information from

1 Tamerlan's search history we'd like to establish.

2 The second thing we'd like to establish through Mr.  
3 Spencer is to introduce a single bar graph breaking down the  
4 web history on the Sony in the form of where was most of the  
5 traffic, single graph, simply again to establish a point we  
6 tried to make through cross-examination in a way that is  
7 objective and visual about what the predominate activity on the  
8 computer was.

9 The third thing we want to establish through Mr.  
02:51 10 Spencer in the guilt phase is to establish the ownership and  
11 creation of the content of the hard drive recovered on Laurel  
12 Street. The government tried to suggest a connection to Jahar  
13 Tsarnaev because there was a deleted copy of a classmate's  
14 English paper on the drive. We want to put in forensic  
15 evidence showing that essentially Tamerlan Tsarnaev's computer  
16 formatted the drive. Tamerlan Tsarnaev's computer created  
17 every single file on the drive including a plethora of radical  
18 information that we see elsewhere on other devices in the case.

19 In addition, we seek to put in two additional  
02:52 20 documents that were found on that hard drive, the two Russian  
21 language bomb-building documents the government did not put in  
22 that were found on that hard drive.

23 And then the third thing -- the final thing we want to  
24 do with Mr. Spencer is to talk a little bit about the origin  
25 and travel of some of the files the government has focused on



1 in the case. In particular, we expect to be able to show that  
2 the documents existed -- this particular document existed first  
3 on Tamerlan Tsarnaev's Samsung computer and then by means of  
4 the missing Patriot thumb drive that there was some discussion  
5 about.

6 On January 21, 2012, the day Tamerlan Tsarnaev leaves,  
7 that thumb drive goes into Tamerlan's computer. The file is  
8 created on the thumb drive. It then goes into the Sony  
9 computer associated with Jahar. The file is created on the  
02:52 10 Sony, and then it goes into the Hewlett-Packard home computer  
11 and then is never seen from again, all on the day Tamerlan  
12 departs the country, just hours before he does so.

13 So, narrowly focused, those are essentially what we  
14 would proffer would be the things that we would want to do with  
15 Mr. Spencer in the guilt phase of the case. All of the other  
16 materials, the extensive contexts of Tamerlan's computer, et  
17 cetera, we understand, based on the Court's ruling, it's not  
18 the time for that now. We'll do that in the penalty.

19 MR. WEINRAB: Your Honor, virtually everything we've  
02:53 20 just heard has to do not with the question of whether Dzhokhar  
21 Tsarnaev became radicalized, which is what the government has  
22 argued from the start and only what it has argued. The  
23 government refrained from stating that -- saying anything about  
24 the source -- the ultimate source of the materials that he  
25 read.

1           The government stated, for example, in opening -- and  
2       no witness has ever said more -- that the defendant read  
3       terrorist writings, that he looked at terrorist videos, that he  
4       listened to terrorist songs without ever suggesting who gave  
5       them to him, if anyone, where he got them from, if any specific  
6       place. The narrative that the defense is seeking to tell here  
7       is one narrative. It came from Tamerlan. Tamerlan gave it to  
8       the defendant; Tamerlan gave it to the defendant; Tamerlan gave  
9       it to the defendant.

02:54 10           That may or may not be relevant in the penalty phase  
11       to -- relevant to the defendant's history and character, but it  
12       has nothing to do with whether defendant is guilty or innocent  
13       of these charges. And yet all this evidence coming in in the  
14       guilt phase can't help but suggest to the jury that it is  
15       relevant to whether he's guilty or innocent of the charges;  
16       that jurors have a lay understanding of guilt. There are  
17       degrees of guilt. They don't necessarily understand that there  
18       are complicated, you know, legal concepts under conspiracy,  
19       joint venture, Pinkerton liability. It's hard enough for them  
02:54 20       to get that. To be confused with all of this information about  
21       relative culpability and made to believe that it matters is  
22       unhelpful and detrimental to the -- the integrity of the  
23       process.

24           I would also say that every single thing that we are  
25       hearing about now we are hearing about for the very first time

1 in this room. We did not get any of these files, not a single  
2 one of them, until Friday, this past Friday, so we --

3 THE COURT: You're talking about Spencer files?

4 MR. WEINRAB: Yes. We had zero business days to  
5 review them, to determine their accuracy, to show them to our  
6 experts so that our expert could review them.

7 This complicated story about how something came from  
8 -- that it was loaded onto a thumb drive and then into one  
9 computer and then to another computer and tracing the history  
02:55 10 of it, that requires some pretty complicated forensic analysis,  
11 which we have had absolutely no time to review with our own  
12 expert because we just heard about it for the very first time  
13 in this room. We didn't even have the files in our possession  
14 they intended to put -- obviously, we had them in the sense of  
15 having them as a whole, but we had no indication of what the  
16 actual exhibits would be that the defense is seeking to  
17 introduce until last Friday.

18 Given that this is really penalty phase information  
19 anyway, it will serve the dual purpose of keeping the jury  
02:56 20 focused on their actual task in the guilt phase and giving us a  
21 little time to prepare for this evidence, potentially move to  
22 exclude it or at least be ready to cross-examine their expert  
23 if we do it in the penalty phase, which, if there is a penalty  
24 phase, is going to be soon so that there's really no great  
25 delay where things can stew in the jury's mind for weeks on end

1 until they get this evidence in.

2 MR. FICK: On the notice point, the notice of the  
3 content of the -- the expert's summary, so to speak, was almost  
4 an identical mirror image of the expert summary that the  
5 government provided. We litigated months ago whether that was  
6 sufficient. The Court ruled it was sufficient. We provided  
7 then a mirror image notice.

8 Every single one -- or almost every single one of the  
9 files that we talk about introducing, whether now or in the  
02:56 10 penalty phase, was listed in the defendant's exhibit list dated  
11 December 29th of this year, updated on March 13th, and again on  
12 March 27th. That listed the name, by file name, of every file  
13 from the Sony and Samsung, et cetera, that we wanted to  
14 introduce. It also listed by description the type of  
15 derivative evidence or spreadsheet that -- it was produced by a  
16 tool that we intended to use. A few then were added after Mr.  
17 Swindon's testimony last week, particularly the voluminous  
18 ones, because we couldn't use the ones that he provided because  
19 of the sort of scrambling of some of the data in them. So the  
02:57 20 notice issue, I would suggest, is simply not an accurate  
21 statement of the situation and essentially a red herring.

22 As to the underlying content, the government has put  
23 in notice evidence. The government has put in -- I'm sorry.  
24 The government has put in evidence of motive. The government  
25 said in its opening that Mr. Tsarnaev self-radicalized. While

1 not necessarily part of the guilt determination, it's a  
2 rebuttal to the presentation the government has made. In the  
3 -- one of the documents Miss Conrad filed earlier on the range  
4 of the transmitter issue, she cited case law to suggest that  
5 where the -- it's error to prohibit the defense from correcting  
6 the record about what one defendant did versus what another  
7 defendant did and to sort of not be able to set the record  
8 straight on those kinds of issues.

9 So for those reasons I would suggest -- oh, the final  
02:58 10 thing is that the Indictment talks about these various computer  
11 files being downloaded implying, in layperson's terms at least,  
12 that they came from the internet and that Mr. Tsarnaev did it  
13 himself. Again, the evidence to show the flow, the origin, and  
14 the sort of means by which they moved from place to place in  
15 this phase, just by way of a couple of examples, is really just  
16 designed to set the record straight on that.

17 THE COURT: All right. I'll absorb all this and give  
18 you some indication in the morning. Really -- okay.

19 So I guess what I want is what's the maximum evidence  
02:58 20 that we could have at this stage?

21 MS. CLARKE: I think that's --

22 THE COURT: So --

23 MR. FICK: I think, in this narrow form, Mr. Spencer  
24 would be maybe an hour.

25 MR. WEINRAB: I think Graff would likely be an hour or

1 45 minutes?

2 MS. CLARKE: It depends on -- you know, we had --  
3 Graff is like Gamble. She's going to answer the questions and  
4 put it in. We could still reach that stipulation, you know.  
5 You know the entirety of the fingerprint evidence that we  
6 propose to admit by virtue of the stipulation having been given  
7 to the government.

8 There are also two items by Miss Conrad, your Honor,  
9 and then I think that's it.

02:59 10 THE COURT: For these other people, the two  
11 professors, for example --

12 MS. CLARKE: We are not calling in this phase.

13 THE COURT: Right. Okay.

14 MS. CLARKE: Mr. Dolakov, frankly, we haven't been  
15 able to locate and are not calling in light of the Court's  
16 ruling anyway. We would like the government to provide us with  
17 his phone number so we can attempt to reach him.

18 Mosque witnesses, whom we did identify to the  
19 government, just not on this list, in light of the government's  
03:00 20 rulings regarding what is and isn't admissible here, we don't  
21 plan to call in this phase.

22 I don't know, Bill, if there are any translation  
23 issues still remaining.

24 MR. FICK: Right. The other issue was -- for example,  
25 in regard to these Russian language bomb-making instructions on

1 the Laurel hard drive, each of them is, like, three or five  
2 pages long, not very lengthy. We've provided translations --  
3 proposed translations to the government a couple of weeks ago  
4 in the hope that, if there were issues or discrepancies, we  
5 would be able to work them out and not have to call someone  
6 just to come in and say the translations are good. The  
7 government has indicated that it doesn't like the translations  
8 without really providing a basis to engage on why. You know --

9 THE COURT: There's time before that happens anyway,  
03:00 10 right?

11 MR. FICK: Well, I guess as to these two particular  
12 documents, ideally, we would like to put these two documents  
13 from the Laurel hard drive in evidence tomorrow and put the  
14 translations up on the screen.

15 MS. CLARKE: Your Honor, I think, with regard to Miss  
16 Otty, her -- she has had a family matter to address, and we've  
17 told her we'll defer her 'til the penalty phase.

18 THE COURT: Okay.

19 MR. WEINRAB: Could I just confirm that? So  
03:01 20 Professors Reynolds and Haykel will not be called in the guilt  
21 phase?

22 MS. CLARKE: That's right.

23 THE COURT: So all of it -- if all of this were to  
24 happen and come in, we'd still be finished by tomorrow  
25 afternoon. That's sort of my general --

1 MR. WATKINS: Your Honor, may I interrupt there  
2 because I will have to do Miss Graff tomorrow. And now I'm  
3 confused because I wouldn't have thought that she would take an  
4 hour to verify that she got positive results. Based on Miss  
5 Gamble's testimony today, I'm a little bit worried that she's  
6 going to show up here saying, I don't remember this case,  
7 anything. You're going to have to guide me through this by  
8 presenting the actual data, the fingerprint matches, as if I  
9 were doing a direct exam, as the government were.

03:02 10 It seemed -- if that is what I'm going to have to do,  
11 I'm going to need another day in order to get that going to be  
12 able to do that kind of analysis, to gather up the data for  
13 each of these positive matches, and essentially develop an  
14 exam. If she's going to simply confirm that she made a  
15 positive examination, it's quicker than an hour. So I'm a  
16 little bit concerned on that front.

17 THE COURT: So tomorrow afternoon or Wednesday  
18 morning?

19 MR. WATKINS: I guess I'm trying to find out from the  
03:02 20 government what they're going to make me do tomorrow.

21 THE COURT: I'm just trying to get the schedule.

22 MR. WATKINS: The two go hand and hand to some extent.

23 THE COURT: Well, yeah, it does. I guess I don't  
24 distinguish between tomorrow afternoon and Wednesday morning  
25 necessarily grossly. That says to me we should plan for



1 closings and instructions on Monday.

2 MS. CLARKE: Not until Monday?

3 THE COURT: Yeah. That's a bit of a gap. I do it  
4 because of the special nature of the weekend that's coming up  
5 for people, including especially the jurors. But also there  
6 are things we have to do. I'm still hoping to get some  
7 suggested instructions and verdict slip and things like that.  
8 There may be some haggling over those. JERS is a huge project,  
9 it seems.

03:03 10 MR. CHAKRAVARTY: Your Honor, on the JERS, there are  
11 some exhibits which are not JERS compatible, like the  
12 interactives. They're non-static files. And there are a  
13 volume of exhibits, like the computer evidence, which are not  
14 currently but they could probably be done. They benefit from  
15 those couple extra days. My sense is that you want anything  
16 that can be in JERS to be in JERS.

17 THE COURT: Yes, for a couple of reasons. One, it  
18 really gives good control over them to the jurors. They can  
19 manipulate that system pretty easily. And it is also a good  
03:03 20 record of what has been sent to the jury. We, as far as I  
21 know, maintain the electronic version of JERS lists for all our  
22 cases in a backup file someplace. So that's important. So as  
23 much as possible, yes.

24 MR. MELLIN: Your Honor, the one concern about closing  
25 on Monday is I know that we've submitted, through Miss Dayton,

1 some 12.2 information to the Court. And I know from talking to  
2 her before all of this started that she wanted to have next  
3 week as the week to have experts test the defendant. So  
4 that's --

5 THE COURT: I haven't read her things.

6 MR. MELLIN: All right.

7 THE COURT: Should you know that much?

8 MR. MELLIN: That much we should know. Conversations  
9 about when some testing could or could not happen, yes, we had  
03:04 10 discussions about when would experts be available for that type  
11 of thing, not about what tests would be performed or what tests  
12 have been performed or what the results of those tests are.

13 THE COURT: I think it's close.

14 MR. WEINRAB: Your Honor, the government has drafted  
15 proposed jury instructions and a proposed verdict form and  
16 given them to the defense. They obviously have a lot on their  
17 plates right now as well. Perhaps if we knew what the date was  
18 that the Court really needs these documents by will help  
19 concentrate everybody's mind.

03:05 20 THE COURT: Work back from -- I would, at least as a  
21 working plan, regard it as Monday, Monday, the 6th.

22 MR. WEINRAB: For the actual instructions?

23 THE COURT: So the actual instructions.

24 MR. WEINRAB: So you'll need the proposed  
25 instructions --

1 THE COURT: Not later than -- I'd like them the end of  
2 the day Wednesday, I guess, and verdict slip.

3 MR. WEINRAB: And verdict slip, both.

4 MR. MELLIN: Does the Court have a thought on when the  
5 penalty phase might start if we're closing on the 6th?

6 THE COURT: It's fluid. It will depend on when they  
7 return with their verdict on the guilt phase.

8 MR. MELLIN: Typically.

9 THE COURT: My general thought is: not very long.  
03:06 10 Some time to reorganize and do the last-minute preparations  
11 that you have to do for a trial, but that could be going on  
12 during their deliberations as well. You know, once the jury is  
13 really working and has done the first part of what they do, if  
14 it's the first part, I want to keep them going.

15 MS. CLARKE: So verdict form and instructions to the  
16 Court by close of business on Wednesday?

17 THE COURT: Wednesday.

18 MS. CLARKE: I think we're all trying to work off of  
19 what the government has submitted.

03:06 20 THE COURT: I don't know if it's going to be that  
21 disputed.

22 MS. CLARKE: Complicated. We're trying to work off of  
23 that with the government so the Court doesn't have --

24 THE COURT: I'm not sure there's going to be much  
25 dispute about those issues. It's really language and format

1 basically. They're going to be very complicated things for the  
2 jury to absorb, so the more straightforward they can be, the  
3 better.

4 MS. CLARKE: As the out of -- one of the  
5 out-of-towners, does the Court typically instruct before  
6 closings or after?

7 THE COURT: Both. I typically give the substantive  
8 instructions before closings so they know the elements of the  
9 offenses before; and so then, when they're argued about, they  
03:07 10 can follow it a little bit better. And after the arguments, I  
11 then give the evaluation of evidence kinds of instructions.

12 MR. CHAKRAVARTY: Your Honor.

13 THE COURT: And the burden of proof I usually put in  
14 the second part because it's closer to when they begin their  
15 deliberations.

16 MS. CLARKE: Thank you.

17 MR. CHAKRAVARTY: Your Honor said you might do a  
18 PowerPoint or something explaining the elements.

19 THE COURT: I'm thinking of that. I will be  
03:07 20 influenced in that by what I see about the verdict slip. Maybe  
21 it will be sufficient just to put -- display the verdict slip  
22 to them as we were instructing. So the verdict slip might  
23 itself be the visual. That might be just as easy. And they  
24 would be familiar with it, too.

25 MR. WEINRAB: Would you then like the verdict for each

1 count to be on a separate page?

2 THE COURT: Yeah, that would be -- yeah, that makes  
3 sense.

4 Now, we do have the Rule 29 motion. I'll have to get  
5 a response to that. Although, again, I'm not sure there's  
6 necessarily a rush. We can -- the rule permits the decision to  
7 be made even after the verdict has been returned, so -- that's  
8 there, too.

9 MR. FICK: I think we have a concern about the number  
03:08 10 of counts that go to the jury, though. If there were some  
11 basis on which certain counts --

12 THE COURT: Right.

13 MR. FICK: We would prefer that decision be made  
14 before, if possible.

15 MS. CONRAD: Also might shorten the length of  
16 deliberations.

17 THE COURT: Maybe. Okay. That's it.

18 MS. CONRAD: Well, Judge, we have a couple issues  
19 still pending with respect to guilt phase. The first is the  
03:08 20 question of the admission by a party opponent.

21 THE COURT: Denied.

22 MS. CONRAD: May I just say the government seems to  
23 have changed its position and originally said this was legal  
24 argument and now just says it's not relevant.

25 THE COURT: I've reviewed the papers. The motion is

1 denied.

2 MS. CONRAD: The other thing has to do with the issue  
3 with respect to the range of the transmitters that were used to  
4 set off the bombs. The government succeeded in excluding  
5 cross-examination by Mr. Watkins regarding the range, which was  
6 part of the report prepared by Mr. Knapp. I filed a memorandum  
7 this morning.

8 THE COURT: I haven't seen it.

9 MS. CONRAD: I'm sorry. I emailed it to Mr. Lyness.

03:09 10 THE COURT: I've been busy.

11 (Laughter.)

12 MS. CONRAD: I filed it this morning. But, anyway, so  
13 that's still an issue because that would be guilt-phase  
14 evidence.

15 THE COURT: I'll look at it.

16 MS. CONRAD: Thank you.

17 MR. WEINRAB: We'll file a response by tomorrow  
18 morning.

19 THE COURT: Okay. All right. Good. Thank you. I'll  
03:09 20 let you know in the morning about the matters that you were --  
21 (Whereupon, at 4:10 p.m. the lobby conference concluded.)

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## C E R T I F I C A T E

I, Cheryl Dahlstrom, RMR, CRR, and Official Reporter  
of the United States District Court, do hereby certify that the  
foregoing transcript constitutes, to the best of my skill and  
ability, a true and accurate transcription of my stenotype  
notes taken in the matter of Criminal Action No. 13-10200-GAO,  
United States of America v. Dzhokhar A. Tsarnaev.

/s/ Cheryl Dahlstrom  
CHERYL DAHLSTROM, RMR, CRR  
Official Court Reporter

Date: October 27, 2015